No. 5133

IN THE

United States Circuit Court of Appeals

FOR THE

NINTH CIRCUIT

LOW FOOK YUNG, alias LAU SHEE, or LAW SHEE, alias AH YOUNG, alias NGONG FON, or LOW SHEE,

Appellant,

vs.

JOHN D. NAGLE, as Commissioner of Immigration at the Port of San Francisco.

Appellee.

BRIEF FOR APPELLEE

GEO. J. HATFIELD,
United States Attorney.

T. J. SHERIDAN,
Assistant United States Attorney.

Attorneys for Appellee.

The James H. Barry Co., San Francisco.

No. 5133

IN THE

United States Circuit Court of Appeals

FOR THE

NINTH CIRCUIT

LOW FOOK YUNG, alias LAU SHEE, or LAW SHEE, alias AH YOUNG, alias NGONG FON, or LOW SHEE,

Appellant,

vs.

JOHN D. NAGLE, as Commissioner of Immigration at the Port of San Francisco,

Appellee.

BRIEF FOR APPELLEE

STATEMENT

This is an appeal from the order of the District Court of the Northern District of California made April 7, 1927, denying a petition for a writ of habeas corpus.

The petition for the writ sets forth that one Low

Fook Yung is detained by the Commissioner of Immigration for the Port of San Francisco upon a warrant in deportation proceedings, it being contended that the deportation proceedings theretofore had were invalid in that there was not legal evidence tending to support the warrant of deportation. Further contentions are: that a letter of one Bonham having been introduced in evidence, he was not produced for cross examination; that hearsay evidence was received, and that appellant was deported "without due process of law."

It is further set forth in the petition that it is stipulated that the copy of the proceedings before the Secretary of Labor brought into court and produced according to custom may be considered a part of the petition with the same effect as if filed therewith. At the hearing on the demurrer to the petition, the said records were produced, and filed as exhibits and have been brought to this court by appellant. These records are the following: Exhibit "A": the record of the *deportation* proceedings against *appellant;* Exhibit "B": the record of proceedings before the immigration bureau had on the application of *appellant* at San Francisco for *entry* in May, *1917*; Exhibit "C": the record upon the application of one *Jew Shep* for certificate made at Fresno in 1922, and other proceedings, including proceedings had on his return in 1923; Exhibit "D": the record of the proceedings before the Immigration Department at *Seattle* on the application for *entry* of *appellant* at that Port in September, 1923; Exhibit "E": the record of proceedings had in regard to several de-

partures and entries into the United States of one *Yee Leung*, the husband of appellant; Exhibit "F": the record of the proceedings before the immigration authorities in regard to the departures and returns to the United States at various times by *Jew Shep;* Exhibit "G": the record of the proceedings on application for entry of one *Jew Jin Ah*, as the infant son of appellant made at Seattle in 1923.

From these exhibits it is seen that one Yee Leung of the Chinese race was born at San Francisco in February, 1879, and was thus an American citizen; that he visited China in April, 1906, returning in September, 1907. (Ex. "E" 52) On the first trip to China, Lee Leung married one Ng Shee June 25, 1906. (Ex. "B" 29) There was one son born—Yee Ting, May 19, 1907. This wife died February 22, 1916. (Ex. "C" 28, 20) Yee Leung thereupon married appellant Lau Shee at Hongkong on September 5, 1916. (Ex. "C" 28) This marriage had the necessary formality. (Ex. "C" 14) Following this marriage Yee Leung and appellant came to the United States, arriving at San Francisco May 26, 1917. (Ex. "C" 5) She was denied entry by the local authorities but an appeal to the Secretary was sustained, which resulted in her admission (Ex. "B" 69, 74) Appellant deserted Yee Leung about 1919, a couple of years after her entry. (Ex. "E" 52) Later in 1922 Yee Leung obtained necessary papers for another visit to China, returning in April, 1923. (Ex. "E" 52)

In August, 1923, one William Jew Shep made affidavit before the American Consulate at Victoria, Hong-

kong, setting forth that he was a citizen of the United States; and that he had departed from San Francisco October 18, 1922, "for the purpose of attending to commercial matters and become married." On or about September 1, 1923, the said Shep, accompanied by appellant as Low Shee, and a minor son arrived at Seattle and applied for entry. Thereupon an inquiry was had before a Board of Special Inquiry at Seattle on September 7, 1922, wherein Low Shee was examined and testified among other things that she was born in Sar Gow Village, Sun Duk District; that she had lived in Sar Gow up to the time of her marriage; that she went up to Canton City and lived there three months before marriage. (Ex. "D" 19) Witness thereupon identifies material photographs. She said she was married to the said Shep at Hongkong, November 19, 1922, "according to the new way." (Ex. "D" 18) She thereupon identified a photograph of the said William Jew Shep, asked whom the photograph represents said "my husband." Asked "is this man your *first* husband?," answered "yes." (Ex. "D" 18) Further asked, "Were you ever married by any other custom than the new Chinese custom? A. No." Asked again about the ceremony she said, "My husband was living in the Sam Sui Bow, a place across from Hongkong where I was living. I took a boat and went across to Hongkong. My husband drove an automobile to the landing to meet me, then I went in the automobile to his house. There was no minister, just Chinese there. There was no particular ceremony, just the Chinese and the man who arranged the marriage affair." (Ex. "D" 17)

The said Shep testifying as to the same incident said:

"Q. By what custom are you married to Low Shee?

A. Half the old Chinese way and half the new way."

He said that there was no ceremoney of worshiping the ancestors at any time. Asked if he had a Chinese red marriage paper, said, "Yes, but not a regular red marriage paper, just a small piece, that is because I was married a second time." (Ex. "D" 11) Testifying further,

"Q. You got married in British territory, didn't you?

A. Yes.

Q. Why didn't you get married according to some custom that was recognized by British authorities?

A. The British really have no law that requires Chinese under their custom and besides it takes a lot of money to get a license from the British Government, so I didn't do it.

Q. Do you mean to say the British Government recognizes this marriage between Chinese without any law at all, not even a Chinese ceremony?

A. I don't know about that. A lot of Chinese get married under British custom.

Q. Why didn't you find out something? You appear to be a pretty intelligent man, making $10,000 a year?

A. Yes. I am an American citizen. I try to get this Mr. King to make out our marriage license and on account of Mr. Wylie coming back to this country and I help him to arrange his things, I didn't have time to."

Asked why he didn't go to the American Consul's office at Hongkong and ask for information, he said at

the time of his marriage he didn't know how to get to the Consul's. (Ex. "D" 7) Asked further,

> "Did you or your wife ever participate in any Chinese ceremony any place?
> A. According to the Chinese the second marriage they don't go much by Chinese custom.
> Q. They just go along and pick a woman anywhere in an automobile, take them home for a cup of tea, and that is all there is to it?
> A. Not exactly that, but we have a small Chinese red paper and there is a man who arranged our marriage affair." (Ex. "D" 7)

It will thus be noted that at the Seattle hearing in 1923 appellant stated that *Shep* then with her was her *first* husband and she inferentially stated that she had never been in the United States before when she deposed that she had *from her birth always lived in her native village up to three* months before her marriage with Shep at Hongkong in November, 1922. (Ex. "D" 19) The result of this inquiry was that the Immigration authorities at Seattle, believing the statements of appellant, admitted her as the wife of *Shep*.

Later, it having come to the attention of the immigration authorities that appellant was the same person as the *Lau Shee* who had formerly been admitted at San Francisco as the wife of *Yee Leung,* the instant deportation proceedings were commenced.

In these proceedings Lau Shee gave a statement (Ex. "A" 37) and testified that she was born in Sar Gow Village, Sun Duk District, China. She thereupon identified as her photograph the photograph attached to the affidavit executed by Yee Leung in 1917, and

identified the photograph as Yee Leung, whom she called Yee Ah Hoy, whom she called her former husband. She admitted she landed with him at San Francisco in 1917. She said that she lived with him between one and a half and two years after landing, "then lost sight of him completely, after which she returned to China." Asked if she was in Fresno in 1921, she at first denied it, then said she remembered submitting a form to the Fresno Office four years ago; asked of her husband Yee Leung, said she saw him a little over two years or a year ago in a Japanese Hotel in San Francisco. Altering the statement said she last saw him a year or two after her admission to the United States. She further said,

"Q. How do you explain your alleged marriage to Jue Shep when you have a husband Yee Leung?
A. Because Yee Leung didn't want me any more.
Q. He just picked up and left you, did he?
A. Yes.
Q. The last information you had, was he living in the United States or China?
A. I last heard that he had returned to China.

(Ex. "A" 36)

Asked further,

"Q. Were you the lawful wife of Yee Leung when he brought you to the United States?
A. Yes.
Q. Are you still the lawful wife of Yee Leung?
A. No, because the marriage relations were severed because we were married in China and he deserted me while we were in the United States, therefore I do not consider myself as his wife.
Q. Is that the only reason you have for not considering yourself as his wife?

A. Yes. Because when he left me he told me that I was entirely out of his control and I was free to marry any one I wished.

Q. Why did you testify on your return to Seattle in September, 1923, with Jew Shep that you had never been married before?

A. I didn't make any mention of it because he had given me up.

Q. You were asked by the Immigration Officers, as the records show, if you were ever married before and you answered 'no.' Is that a falsehood?

A. I told an untruth.

* * * *

Q. Did you ever secure a divorce from Yee Leung?

A. No, because we were not married by a consular officer, and there was no divorce to be had.

Q. Why didn't you get a divorce from him in the United States?

A. Because we were not married according to the laws of this country." (Ex. "A" 35)

She admitted that prior to her departure from China in 1922, while Jew Shep acted as an interpreter at the Fresno Office, she knew him. That he didn't know she was a married woman until he interpreted for her at the Fresno Office; that he knew it long before he and applicant went to China. (Ex. "A" 34) She stated that she had married Yee Leung some place in Hongkong. (Ex. "A" 33)

"Q. You claimed that you had never been married before, you don't assert that to be a fact do you?

A. I did not relate on any matters before I returned to China.

Q. You were asked whether you had ever been married before?

A. Yes.

Q. What did you tell them at Seattle?
A. I said I had not been married before."

Asked why she went to Seattle instead of San Francisco, she said that on account of the infant she saved ten days at sea. She admitted that Shep when interpreting knew that applicant was Lee Yeung's wife. (Ex. "A" 32) At the hearing before the Board of Special Inquiry in the Deportation proceedings this statement was put in evidence. The following is a transcript of a part of the proceedings in the final hearing, showing the status of the case:

"BY EXAMINING INSPECTOR TO ATTORNEY E. F. MITCHELL:

Q. Will you represent the Chinese alien, Lau Shee before this Service? A. Yes.

Q. And have you entered an appearance in writing? A. Yes.

NOTE: The following letter dated Nov. 4, 1926, addressed to the Commissioner of Immigration, San Francisco, Calif., from Attorney Herbert F. Chamberlain: 'I hereby consent to the substitution of Emery F. Mitchell in my place and stead as attorney for LAU SHEE in the matters now pending before the Department.'

Q. Are you willing and ready to proceed with the hearing? A. Yes.

BY EXAMINING INSPECTOR TO ALIEN AND ATTORNEY:

Q. Do you fully understand the nature of these proceedings? (Attorney) Yes. (Alien) I do not understand.

TO ATTORNEY MITCHELL:

Q. Do you wish the interpreter to explain more fully the nature of the charges contained in the war-

rant of arrest to the alien? A. No, I do not think it is necessary.

TO THE ALIEN BY EXAMINING INSPECTOR THRU THE CHINESE INTERPRETER:

Q. Are you the same Lau Shee who made a sworn statement before an inspector of this Service in San Francisco, October 7th, 1924? A. Yes.

TO THE ATTORNEY:

Q. Do you wish the statement read to the alien by the interpreter? A. No, I waive the reading of the statement, and object to its introduction into the record as its part of the case upon the grounds that at the time, that she was not represented by counsel, nor advised of her right to be so represented.

BY EXAMINING INSPECTOR TO THE ATTORNEY:

You are advised that the statement referred to is introduced in and made a part of the record, and any reason or objection you have to its introduction into the record, should be discussed in your brief in the case. There is also incorporated in and made a part of the record, report of R. P. Bonham, District Director of Immigration, Portland, Oregon, dated October 6th, 1924.

BY ATTORNEY MITCHELL:

For the purpose of protection of the record, I object to the introduction of this letter into the evidence upon the grounds that we have not been afforded the right to cross-examination of Inspector Bonham and hereby demand that he be produced if this letter is made a part of the record over our objections.

BY EXAMINING INSPECTOR BORDEN:

Under the Immigration Regulations, your objections will be made a part of the record, but the reasons therefore must be stated in your brief. At this time I wish to introduce as exhibits in this case, Se-

attle file No. 405/1-5 covering the admission of Jew Shep at that port on the President Jackson, Sept. 1, 1923; Seattle file No. 4-5/1-6 covering admission of Low Shee, admitted Sept. 29, 1923 and Seattle file No. 405/1-7 covering admission of Jew Jim Ah at Seattle, Sept. 29, 1923; San Francisco file No. 16210/2-10, covering admission of Lau Shee at San Francisco, Sept. 13, 1917, ex S.S. Korea Maru; San Francisco file No. 12017/24300 covering entries and departures of Jew Shep.

TO THE ATTORNEY:

Q. Do you wish to introduce any evidence on any testimony in the case? A. If Inspector Bonham's letter is considered a part of the record, naturally we want the benefit of cross-examination of this witness as to matters purported and set forth in his letter of October 6th, 1924. We also ask that the complete file of Yee Leung be made and considered a part of the record herein. Lee Young being the alleged former Husband of Lau Shee; particular reference is made to the arrivals and departures of this alien into the United States, and his examination upon application for return certificates taken before the immigration officials since 1917. In view of the fact that the letter of October 6th, 1924, of Inspector Bonham is based upon heresay testimony and information which is not a part of the record, we waive our right to cross examine said inspector as to subject matters contained therein.

Q. Have you anything further to present? A. Nothing other than our brief in the matter. Of course there is no evidence of any prostitution or immoral acts contained in the record, and we ask a week to submit briefs in the matter. I wish to have the record covering Yee Leung at the San Francisco office for purpose of examination before writing the brief herein, and would like a week after the receipt of this record to submit our briefs.

It is understood that the case stands submitted." (Ex. "A" 40)

Having heard the case, the view of the Board of Inquiry was stated in the following summary:

"12020/6392

November 30, 1926.

SUMMARY: The alien, LAU SHEE, age 27 years, female, native and citizen of China, of the Chinese race, last entered the United States, September 19, 1923, at Seattle, Washington, on the SS PRESIDENT JACKSON as the alleged wife of one WILLIAM JEW SHEP, a P. L. native.

On November 5th, last, the alien was granted a hearing on warrant of arrest 55387/352 in which it is charged that she has been found in the United States in violation of Rule 9, Chinese Rules and of the Supreme Court decision on which such rule is based; having secured admission by fraud, not having been at the time of her entry, the wife of a member of the exempt classes; that she entered the United States for an immoral purpose; that she has been found practicing prostitution after entry and that she entered by means of false and misleading statements.

There is no evidence in the record to sustain the charge that she practiced prostitution after her entry and the time has expired on the charge covered by the code word 'falsetto.'

This alien, LAU SHEE first came to the United States, May 26, 1917, and was admitted as the wife of YEE LEUNG, a P. L. Native (see file 12017/29978). The record shows that they separated about two years after entry and that LAU SHEE went to work at a restaurant in Fresno, California, partly owned by William Jew Shep. Later she and JEW SHEP went to China presumably on different dates and on November 19, 1922, she claims to have married JEW SHEP in China according to Chinese custom. The record shows that LAU SHEE has never been divorced from YEE LEUNG and therefore could not have been the lawful wife of JEW

SHEP when they arrived at Seattle on the SS PRESIDENT JACKSON, September 9, 1923.

RECOMMENDATION:

In my opinion the record clearly shows that LAU SHEE is in the United States in violation of Rule 9, Chinese Rules and the Supreme Court decision on which such rule is based, having gained admission by fraud, not having been at the time of her entry the wife of a member of the exempt classes; and that she entered the United States for an immoral purpose, and it is recommended that she be deported." (Ex. "A" 38)

Following the order of the Board of Special Inquiry an appeal was taken to the Secretary of Labor and the matter coming before the Board of Review, it gave the following opinion, which was approved by the Secretary:

"55,387/352 San Francisco January 6, 1927

In re: LAU SHEE or LAW SHEE, alias AH YOUNG, alias NGONG FON, Aged about 27, Native and citizen of China, Chinese race, entered as the wife of a native at Seattle, Washington, ex ss 'President Jackson,' September 1, 1923.

This case comes before the Board of Review in warrant proceedings, it being charged that Lau Shee has been found within the United States in violation of Rule 9, Chinese Rules, and of the Supreme Court decision on which such Rule is based, having secured admission by fraud, not having been at the time of her entry the wife of a member of the exempt classes; that she entered the United States for an immoral purpose; that she has been found practicing prostitution after her entry; and that she entered by means of false and misleading statements thereby entering without inspection.

No local counsel. Attorney Emery F. Mitchell represents the defendant at San Francisco. Mr. Wil-

liam H. Wylie, of San Diego, formerly represented her.

Lau Shee has now been in the United States too long to deport her on the charge that she entered by means of false and misleading statements thereby entering without inspection. There is no evidence in the record supporting the charge that she has been found practicing prostitution after her entry. The fact is, however, and she admits it, that she was admitted to the United States in 1917 as the wife of one YEE LEUNG, an alleged citizen of this country. She claims to have lived with him for about two years, and says that he left her. After working in this country for a time, she returned to China. She claims to have regarded herself as separated from her former husband and free to marry. She returned to the United States in 1923 as the wife of one William Jew Shep, alias Jew Shu Mon, who is conceded to be a citizen of the United States. The later admission was through the port of Seattle, whereas she was previously landed at San Francisco. At Seattle she testified that she had never been in the United States before, and was admitted without her identity as the woman who had been admitted at San Francisco as the wife of Yee Leung being known. There is no reason for supposing that Yee Leung is dead, and no such claim is made. Furthermore, Lau Shee makes no claim that she was divorced in accord with American law while in this country, nor is any claim made that a formal divorce was obtained in China.

The charge that she entered the United States for an immoral purpose is, therefore, sustained as is also the charge that she has been found within the United States in violation of Rule 9, Chinese Rules, under the Supreme Court decision on which such Rule is based, having secured admission by fraud, not having been at the time of her entry, the wife of a member of the exempt classes.

It is recommended that Lau Shee, alias Ah Young, alias Ngong Fon, be deported to China at the ex-

pense of the steamship company responsible for bringing her to this country in 1923.

W. N. SMELSER,
Chairman, Secy. & Comr.

WCW/ws

So Ordered:
W. W. HUSBAND,
Second Assistant Secretary."

The grounds stated in the *warrant of deportation* which followed such decision were not so broad as the grounds stated in the original *warrant of arrest.* In the warrant of deportation dated January 20, 1927, it is recited as grounds for deportation the following: (Ex. "A" 44)

"WHEREAS, from proofs submitted to me, after due hearing before Immigrant Inspector T. E. Borden, held at San Francisco, California,

I have become satisfied that the alien

LOW FOON YONG alias LAU SHEE or LAW SHEE alias AH YOUNG alias NGONG FON or LOW SHEE

who landed at the port of Seattle, Wash., ex SS 'President Jackson,' on the 1st day of September, 1923, is subject to be returned to the country whence she came under section 19 of the immigration act of February 5, 1917, being subject to deportation under the provisions of a law of the United States, to wit, The Chinese-exclusion Law, in that she has been found within the United States in violation of rule 9, Chinese rules, and of the Supreme Court decision on which such rule is based, having secured admission by fraud, not having been at the time of entry, the wife of a member of the exempt classes, and

WHEREAS, from proofs submitted to me, after due hearing before Immigrant Inspector T. E. Borden, held at San Francisco, California, I have be-

come satisfied that the said alien has been found in the United States in violation of the immigration act of February 5, 1917, in that:

She entered the United States for an immoral purpose."

The assignments of error (R. 14) are three in number and amount to no more than that the court erred: in sustaining the demurrer to the petition; in not holding that the petition was sufficient, and in holding that it had no jurisdiction to issue the writ. It may be said that it made no holding of such want of jurisdiction.

In the brief of counsel four points are made in the argument:

(1) That findings by the board of review as the basis for the warrant of deportation are contrary to law; and herein it is urged that a marriage was shown between appellant and Jew Shep; that it was not shown to be invalid; that the immigration authorities at Seattle having found such marriage as a fact, the government is now bound;

(2) The hearing was unfair and herein certain specifications of such unfairness are discussed;

(a) That a confidential report was placed before the Secretary of Labor and not made a part of the record, being a certain letter from one Dunton to one Bonham;

(b) That there was introduced in evidence the letter or report of Bonham to the Commissioner of Immigration at San Francisco regarding the case;

(c) That a certain statement referred to in certain notations made on the Immigration Record of Yee Leung was not produced;

(d) That it was unfair to postpone the hearing of the charge for two years.

We shall show that,

(a) There was ample evidence which could have been accepted by the Board of Inquiry showing that the alleged marriage of appellant to Jew Shep would have been bigamous and thus wholly invalid;

(b) The hearing was not unfair in the respects urged, and that as to contentions (2 a), (2 c), and (2 d) hereinabove there is no warrant therefor in the petition for writ of *habeas corpus;* such grounds were not then urged.

ARGUMENT

I

The Secretary of Labor was authorized to find from evidence that appellant entered the United States for an immoral purpose —to maintain a relationship with one Shep which would have been concubinage.

From the references to the statement of appellant and to the immigration records put in evidence, it is seen that appellant in 1916 entered into a valid marriage at the British Colony of Hongkong with one Yee Leung, held to be an American citizen; that she came to the United States with Yee Leung, arriving at the Port of San Francisco early in 1917; that she was not admitted as such wife of an American citizen until after proceedings taken before a Board of Special Inquiry, which were finally passed upon by the Secretary of Commerce and Labor; that a couple of years thereafter she parted from Yee Leung. She says he deserted her (Ex. "A" 36). He states that she deserted him (Ex. "E" 52). The Board could have taken either view but, in any event, they simply separated without more. (Ex. "A" 36, 35.)

In 1921 or 1922 she became acquainted with Jew Shep, also claimed to be an American citizen, and within a short time it came to his knowledge that she was the wife of Yee Leung. (Ex. "A" 34.) The two parties departed for China separately. In November, 1922, at the same British Colony of Hongkong, they assumed some pretended relationship of marriage. From the accounts hereinabove given, it is likely that there was

little, if any ceremony; that there was little more than the assumption of such relationship. Whether upon the theory of a common law marriage the transaction would have been sufficient to constitute a marriage between the parties, if free to marry, need not be considered. For whatever the foreign marriage may have been, it is clear that on account of the previous marriage of the woman the marriage would have been bigamous; that it would thus not be recognized in this country, and the immigration authorities were not bound to believe that it was assumed in good faith. The Board similarly could have concluded from the evidence that the relationship following to be assumed in this country would have been the ordinary relationship of concubinage.

That Yee Leung was then living is amply established from the recital of his immigration record. (Exhibit "E" 53, 52.) Thus he is shown to have applied for a certificate under Form 430 as a prelude to a visit to China at a later date, his photograph being attached attested by his signature so as to show conclusive proof of identity, and that at a still later date he returned from China. (Ex. "E" 52.)

There is no pretense on the part of Law Shee that she was ever divorced. She expressly denied that she was divorced (Ex. "A" 35), and if she was deserted as she pretends (Ex. "A" 36), she alone could have obtained the divorce. She makes no reference to any divorce having been obtained by her husband, although she was being questioned as to reasons as to why she could have pretended the second marriage was valid, the first having been entered into. The entire lack of

such divorce may have been inferred from her examination when she gave her statement October 7, 1924. (Ex. "A" 36, 35.) Bilokumsky v. Tod, 263 U.S.149,154

Upon such a state of the record the several principles of the law which would support the ruling of the immigration authorities are really beyond dispute.

(a) Thus it is settled, in fact it is conceded, that the decision of the immigration authorities upon such questions of fact, there being evidence to support it, are not to be reviewed upon *habeas corpus* proceedings. We need no more than cite in passing a couple of authorities to such effect.

In the case of

Lee Loy vs. *Nagle,* 15 F. (2d) 50

the court said:

> "To justify a review by the court, there must be something more than 'the basis of a dispute.' *Tulsidas* vs. *Insular Collector of Customs,* 269 U. S. 258, 43 S. Ct. 586, 67 L. Ed. 969. After taking the evidence all together, the department found the right to enter not sustained; if there is any evidence, the court cannot interfere, *Jeung Bock Hong* vs. *White,* 256 F. 23, 189 C. C. A. 161. Nor can the court go into the insufficiency of the probative facts. *White* vs. *Young Yan* (C. C. A.) 278 F. 619. Nor is the department required ' . . . to point out in detail every discrepancy in the testimony and every defect in the proof that might give rise to a doubt.' *Dea Hong* vs. *Nagle* (C. C. A.), 300 F. 727, at page 729."

In the case of

Chin Yow vs. *United States,* 208 U. S. 8, 13,

which was that of an applicant for admission who

claimed to have been born in the United States, the Supreme Court said:

> "But unless and until it is proved to the satisfaction of the judge that a hearing properly so called was denied, the merits of the case are not open, and, we may add, the denial of a hearing cannot be established by proving that the decision was wrong."

(b) That for a man to bring a woman or for a woman to come to the United States to assume a relationship which would be not marriage but concubinage is such immoral conduct as to authorize the deportation under the immigration act of the guilty party. This application of the provisions of the statute is equally well established.

Thus in the case of

> *U. S. ex rel Femina* vs. *Curran*, 12 Fed. (2d) 639, 640.

it was said:

> "Result is that, if this realtor did bring into this country Mrs. Faccio for the purpose of retaining her as, or making her, his mistress, is subject to deportation."

In

> *United States* vs. *Bitty*, 208 U. S. 293, 52 L. Ed. 543, 547,

it is said:

> "Guided by these considerations and rules, we must hold that Congress intended by the words 'or for any other immoral purpose,' to include the case of anyone who imported into the United States an

> alien woman that she might live with him as his concubine. The statute in question, it must be remembered, was intended to keep out of this country immigrants whose permanent residence here would not be desirable or for the common good, and we cannot suppose either that Congress intended to exempt from the operation of the statute the importation of an alien woman brought here only that she might live in a state of concubinage with the man importing her, or that it did not regard such an importation as being for an immoral purpose."

And in the recent case before this court

> *Kostenowczyk* vs. *Nagle*, No. 4975 (decided April 18, 1927)

upon the authority of the two cases cited the court applied the same principle. In the latter case the court said of Kostenowczyk:

> "Petitioner well knew that his marriage was in force and that it was a complete obstacle to marriage with another woman."

In that case there was a contention that there was a common law marriage in Siberia previous to the coming to the United States. The contention was held not well founded among other reasons for the reason given that it would be bigamous.

So in the instant case, the appellant Lau Shee well knew that she had been previously married to another and without waiting for such marriage to be dissolved either by death or divorce, or in any other manner, recklessly and wilfully assumed the irregular relationship with the party Shep; she certainly knew that the marriage would

be bigamous and in all civilized countries invalid. She was an adult in her full senses and could not have believed the contrary. If she were to protest her good faith the immigratioin authorities would not be bound under the facts to believe such protestation; it must be taken as a fact that the marriage was not in good faith. The reasons given by her that Yee Leung had left her, telling her in effect that she could do as she pleased, could not be taken as other than trivial.

That she was then the wife of another would prevent her marriage to Shep regardless of what might have been the law in Hongkong. This fact will serve to differentiate the two cases cited by counsel on the point; the cases of *Kane* vs. *Johnson,* 13 Fed. (2d) 432, and *ex parte Suzanna,* 295 Fed. 713. These cases were cited upon the proposition that a marriage valid in the country where executed would be deemed to be valid here. But it will be noted that the statement of the principle contains (p. 717) the well established exception that it is

> "only provided that it is not celebrated between two persons who are not too nearly related to each other or between two persons, *one of whom had a wife or husband still living.* See cases cited above."

Were it otherwise courts in civilized countries would be compelled at times to recognize plural marriages. The authorities are all to the contrary.

Moreover, although the second alleged marriage took place out of this State, there was later, as the parties intended, cohabitation within this State, and under

Section 1106 of the Penal Code of California it is provided,

> "Sec. 1106. Evidence on a trial for bigamy. Upon a trial for bigamy, it is not necessary to prove either of the marriages by the register, certificate, or other record evidence thereof, but the same may be proved by such evidence as is admissible to prove a marriage in other cases; *and when the second marriage took place out of this state, proof of that fact, accompanied with proof of cohabitation thereafter in this state, is sufficient to sustain the charge.*" (Italics added.)

Accordingly, the first marriage being undissolved and the proof clear that the parties cohabitated in this state, to assume that they really married at Hongkong would be to assume that they committed a grave felony. Upon such principle the Department may well have inferred that there was no pretense of a marriage in Hongkong but that there was a mere assumption of an irregular relationship.

(d) Authorities are cited in support of the contention that from the presumption of the legality of a marriage, there is to be inferred the dissolution of a previous marriage either by death or divorce, and that the burden is on one who attacks the subsequent marriage to show that the first remained undissolved, but it is very clear that such presumption cannot avail appellant here for the reason as we have pointed out, the government expressly excluded the case of the death of Yee Leung. Thus he is shown to be living by his execution of an application to depart from the United States made on July 30, 1926, accompanied by his photo-

graph and attested by his signature. (Ex. "E" 53.) That he was alive later than the alleged marriage of appellant to Shep in Hongkong is shown by various recitals of Exhibit "E." That the marriage was not dissolved by judicial decree is shown from the statement of petitioner given on October 7, 1924, (Ex. "A" 37, *et seq.*) especially the excerpts hereinabove referred to.

There would be no room for the invocation of the presumption referred to for the reason that appellant appeared and testified on the subject, expressly denied that she obtained a divorce and, asked for her reasons for assuming that she was free to marry in spite of her former marriage, did not claim the death of Yee Leung or that she believed that he was dead; she did not claim any divorce, but on the contrary, gave as such reason that he "picked up and left her" and merely told her she could do as she pleased. The bigamous character of any pretended marriage to Shep is thus conclusively proven. *A fortiori* the immigration authorities could have inferred it as a fact from the proofs before them.

Nor is it pertinent that the woman might have obtained a divorce and then married Shep and that her relationship then would have been regular and her visit to the United States not subject to any imputation of immorality. It is sufficient to say that she did not do so, but, on the contrary, flaunted the laws of the United States. In any other such situation it might be wondered why the parties involved did not procure a divorce rather than commit some grave crime, but it is not held that the potentiality of divorce would be at

all considered as a defense or excuse. Appellant from her foreign or Chinese nationality would not be weighed in a different scale from that of an ordinary white woman, a citizen of the United States, who in defiance of a former marriage without a pretense of divorce assumes an irregular relationship.

The case of *Ex parte Morel,* 292 Fed. 423, is cited but that case is easily distinguishable from the instant case. There two citizens of France, perfectly free to marry and contemplating marriage, being in the State of California entered into what would have been a common law marriage but for the enactment of a recent California Statute. It is shown that the acts would have constituted a marriage in France, the law of which they were familiar. It indeed would have been a marriage in any common law jurisdiction in most States of the Union. Later they made a trip to Canada and returned. Still later, doubting the validity of the first marriage, they separated, whereupon the deportation proceeding against the man was instituted. The Circuit Court of Appeals of the Second Circuit (270 Fed. 577) seems to have sustained the deportation. But in the case cited, the District Court at Seattle, finding that the alleged marriage was in good faith, finding further that during the sojourn in Canada there was in fact a common law marriage relationship assumed, held that there was not an importation for an immoral purpose, the court emphasizing the purpose of good faith in that the parties competent to marry believed themselves married. Here, as we have seen, the parties were not competent to marry, could not in good faith have believed

themselves married, but, as in any other similar case, they were simply flaunting the law.

II.

The hearing was not unfair for any of the particulars referred to.

(a) *Complaint is made of the receipt in evidence of the initial report of Inspector Bonham,* constituting page 3 of Exhibit "A," and complaint is further made that he was not produced for cross-examination.

It may be noted that this report, as far as any reference was made to alleged prostitution, could not be prejudicial for the reason that there was found there was no prostitution; as to the remainder of the report, it was substantially to the effect that from an examination of immigration records the identity of Lau Shee as the same person who married Yee Leung was stated. But since this is freely admitted, and completely shown by the records subsequently put in evidence, the matter could have been of no importance. As far as any cross-examination of Bonham is concerned, that was expressly waived, as will be seen from the excerpt from page 40 of Exhibit "A" hereinabove set forth.

But there could not be any objection taken to the character of this evidence, since it is well established that a hearing does not cease to be fair merely because rules of evidence or procedure applicable in judicial proceedings have not been strictly followed by the ad-

ministrative officers or because some evidence has been improperly received or rejected.

U. S. vs. *Tod,* 263 U. S. 149.

Tang Tun vs. *Edsell,* 223 U. S. 673, 681.

In the case of *United States* vs. *Curran,* 12 F. (2nd), 636, *supra,* it was said:

> "It is now long established, in proceedings in immigration cases, that neither the hearsay rule nor the best evidence rule, nor, indeed, any of the common-law rules of evidence, need be observed. A board of special inquiry, which determines these cases, may consider heresay evidence and administrative findings, although based upon evidence which would not be competent in a court of law, which evidence may not be attacked upon habeas corpus. *United States ex rel. Diamond* vs. *Uhl* (C. C. A.) 266 F. 34; *Morrell* vs. *Baker* (C. C. A.) 270 F. 577. The weight to be given to such documents as were admitted, relating to the genuineness of the alien's visas, was for the board's determination."

That the immigration records put in evidence were properly so received and have probative value is, of course well established.

Chang Sim vs. *White,* 277 Fed. 765;

In re Jem Yuen, 188 Fed. 350;

White vs. *Chan Wy Sheung,* 270 Fed. 764;

Chin Shee vs. *White,* 273 Fed. 801;

Soo Hoo Hung et al. vs. *Nagle,* 3 F. (2d) 267.

In the case last noted it was said:

> "Appellants say that the files in the case of Soo Hoo Jin, an alleged son of Soo Hoo Hing, who was

deported, though considered in the decision of the applications under consideration, were never brought to the attention of the applicants. The record refutes the contention by showing that the entire record was given to the attorney for these applicants, and that he later returned certain exhibits, which included the files and the exhibit, which it is now said were not brought to the attention of the applicants."

And such records were so considered here.

(b) *The hearing was not unfair for anything indicated in the letter of Dutton to Bonham,* dated April 17, 1926.

This letter from one official to another is found in the Seattle file of Lau Shee. It is merely an incidental reference to some confidential report to an official of the Immigration Bureau at Washington, the contents of the report or that it cut any figure in the instant case is not otherwise indicated. The Exhibit "A" contains the entire proceedings had in regard to the present warrant of deportation. Certain collections of papers constituting individual immigration records were put in evidence in connection therewith, the Lau Shee Seattle file Number 405/1-6 included. But since that file or any of the other files does not contain the alleged confidential report, nor was it shown to have been received by the Immigration Department, or in the Department's proceedings it seems to us to be entirely without the case. As far as it appears, it was originally made in some collateral proceeding and would have no more relevancy than any other record of the voluminous records of the Department of Labor.

Moreover, this particular specification was not made

in the petition for writ of *habeas corpus* as a ground thereof, and for that reason alone would not be considered.

Dea Hong vs. *Nagle,* 300 F. 727;
Ex parte Yoshimasa Nomura, 297 F. 191.

(c) *There is no unfairness shown in respect to an alleged statement of Inspector Kuchein* found in the Immigration file of Yee Leung referring to a statement made 3-16-22 in applying for a return certificate said to be evasive.

It appears that appellant now claims that such statement should have been placed before the Immigration Bureau in the instant case. It is sufficient to say that the record does not at any place show any request by appellant for the production or introduction in evidence of the statement, nor that the matter would be important or relevant in the present inquiry. Had it been excluded it would be a mere case of a rejection of evidence and would not upon the authorities hereinabove cited have rendered the hearing unfair.

Moreover, as indicated in the preceding paragraph, this contention was not made in the petition for writ of habeas corpus and cannot now be considered.

Dea Hong vs. *Nagle, supra* 300 F. 727;
Ex parte Yoshimasa Nomura, 297 F. 191.

(d) *It is finally contended that the hearing is unfair for the delay of two years between* the issuance of the warrant of arrest and the final hearing.

It does not appear that any such delay prejudiced

appellant. She was at large on bail, going her way, and, no doubt, was entirely willing to have the proceedings drawn out knowing that delay would make for her rather than against her in assembling evidence. It is not shown that any particular demand for hearing was made until just before one was accorded, or that the delay was not according to her desires. See

Seif vs. *Nagle*, 14 F. (2d) 416.

STATUTE INVOLVED.

The deportation of the appellant from the United States has full statutory basis. Thus it is provided in Section 3 of the Immigration Act of February 5, 1917, 39 Stat. 875, U. S. Compiled Statutes, Section 4289¼b, as follows:

> "The following classes of aliens shall be excluded from admission into the United States; * * * persons coming into the United States for the purpose of prostitution or *for any other immoral purpose* * * *."

And Section 4 of the same Act provides:

> "The importation into the United States of any alien for the purpose of prostitution *or for any other immoral* purpose is hereby forbidden * * *." (Italics added.)

And Section 19 of the same Act provides for the deportation within five years after entry of any alien who at the time of entry was a member of one or more of the classes excluded by law or an alien who shall have entered or who shall be found in the United States in

violation of this Act or in violation of any other law of the United States.

The appellant would also be deportable under the provisions of that Act as being in the United States in violation of the Chinese Exclusion Acts. She is shown to be an alien of Chinese birth and not admissible under any of the exceptions, especially she is shown not to have been admissible under Rule 9 as she claims, as being the wife of an American citizen, her proof in that behalf being fraudulent.

It will be noted that the exclusion in the case of appellant is not necessarily to be based upon the theory of *prostitution* which will be defined as indiscriminate commerce for hire but rather that she enters for some *other immoral purpose,* such as the purpose here shown, that of *concubinage* or to maintain an irregular marriage relation, there being no possible pretense of marriage.

CONCLUSION

In conclusion we show that the deportation proceeding now under review is the ordinary case where the department fairly considered the case, accorded appellant all the rights to which she was entitled, allowed her to present any material evidence which she offered. She was represented by counsel and it conclusively appeared from her own statement that she had been previously married. She made no pretense that the previous marriage was dissolved by death or divorce; it was shown in fact that the first husband is still living and that she was not divorced, whence there arises the conclusive presumption that she entered the United States to assume an irregular relationship with one Shep, which would have constituted concubinage, and which thus would have been an immoral act, and she was properly deported.

The order of the District Court should be affirmed.

Respectfully submitted,

GEO. J. HATFIELD,
United States Attorney.

T. J. SHERIDAN,
Asst. United States Attorney.

Attorneys for Appellee.